under section 81(2) of the Income Tax Ordinance. But as, in my judgment, the Board did not err in law in regard to the meaning of the word "business", the decision of the Board as regards the question of fact involved in the question of mixed law and fact must stand, unless it cannot be regarded as a reasonable conclusion. In my opinion, it was not only a reasonable conclusion but the only reasonable conclusion in the absence of any evidence of any intention on the part of the appellant to carry on a business.

In the result, I would allow the appeal with costs here and in the Court below, reverse the judgment of the High Court, annul the assessment made by the Comptroller of Income Tax in respect of the profit of $245,000, and order a refund of the income tax paid by the taxpayer under the assessment.

Appeal allowed.

Solicitors: *Lee & Lee; State Advocate-General.*

LEE CHEE WAN & ORS. v. PUBLIC PROSECUTOR

[C. A. (Thomson, C.J., Ong and Ismail Khan, JJ.) December 21, 1960]

[K. L. — F.M. Criminal Appeal No. 23 of 1960]

Criminal Law and Procedure — Joinder of trial — Capital offences and non-capital offence — Penal Code, ss.302 and 307 — Criminal Procedure Code (Cap. 6), Chapters XX and XXII.

A trial by jury for two capital offences together with a non-capital offence is a nullity.

COURT OF APPEAL.

David Marshall (*Jag-Jit Singh* with him) for 1st, 2nd, 3rd, 4th & 5th appellants.

M. S. Mahendran for the 6th appellant.

Tengku Ahmad Rithauddeen (Deputy Public Prosecutor) for respondent.

Thomson C.J. (delivering oral judgment of the Court): These six appellants were tried together on two charges of murder in contravention of section 302 of the Penal Code and one charge of attempted murder in contravention of section 307 of the Penal Code. They were all convicted on all three charges and, with the exception of one of them who was a young person, were sentenced to death in respect of the first charge.

The three charges were tried together by a Judge and jury.

The offences were committed in the State of Perak and the trial took place in that State. The trial therefore was governed by the provisions of the Criminal Procedure Code of the former Federated Malay States.

Under that Code in any case where the punishment of death is authorised by law the accused person is to be tried by a jury and the proceedings at the trial are to be in accordance with the provisions of Chapter XXII of the Code. In other cases, that is to say where the punishment of death is not authorised by law, the trial is to be had before a Judge alone and the procedure is to be governed by the provisions of Chapter XX of the Criminal Procedure Code (Cap. 6).

The punishment for murder is death. The punishment for attempted murder is imprisonment.

In our opinion a trial by jury for two capital offences together with a non-capital offence is a nullity.

In the circumstances we have no option but to allow the appeal, to quash the convictions and order a re-trial.

Appeal allowed. Re-trial ordered.

PUBLIC PROSECUTOR v. NAI PRASIT

[R. Cr. J. (Thomson, C.J.) January 24, 1961]

[K. L. — Selangor Criminal Revision No. 3 of 1961]

Criminal Law and Procedure — Bigamy — Jurisdiction to try offence committed outside Federation — Courts Ordinance, 1948, s.59 — Penal Code, s.494.

The Sessions Court has no jurisdiction to try the offence of bigamy committed outside the Federation.

Case referred to:—

(1) *The Trial of Earl Russell* [1901] A.C. 446.

CRIMINAL REVISION.

Thomson C.J.: The accused in this case was convicted in the Sessions Court at Kuala Lumpur for bigamy in contravention of section 494 of the Penal Code.

The actual act of bigamy, that is to say, the second marriage which was alleged to be void by reason of the wife of the first marriage being still alive, took place in the State of Victoria in the Commonwealth of Australia. In the circumstances the Sessions Court had no jurisdiction to try the case. The territorial jurisdiction of the Sessions Court is set out in section 59 of the Courts Ordinance and section 9 of the Criminal Procedure Code and except in the case of certain offences committed on the High Seas (that is outside territorial waters) the Court has no jurisdiction to try any offence committed outside the Federation.

In the present case, therefore, the proceedings were a nullity and the conviction of the accused is accordingly set aside.

In order to avoid misunderstanding I should point out that the power of the English Courts to try a bigamy committed outside their territorial jurisdiction (see *Earl Russell's case*[1]) depends entirely on the wording of section 57 of the Offences against the Person Act, 1861, which has nothing in common with the wording of section 494 of the Penal Code.

I would add that in this particular case the Court had no power to take cognisance of the offence wherever it was committed because the complaint which commenced the proceedings was made by a Police Officer and not, as required by section 131 of the Criminal Procedure Code, by any person aggrieved or by the Public Prosecutor.

Conviction set aside.